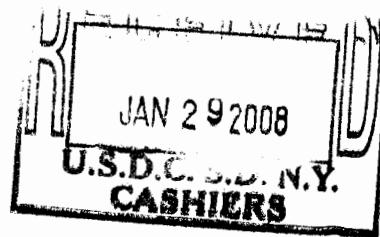


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*Attorneys for Plaintiffs:*  
Monster Worldwide, Inc. and Monster  
(California), Inc.



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
MONSTER WORLDWIDE, INC. and :  
MONSTER (CALIFORNIA), INC. :  
-----x

*Plaintiffs,* :  
v. :  
-----x

FRANCHISE MONSTER CORP. :  
-----x

JUDGE PRESKA

CASE NO.: 08 CV 0956

ECF CASE

*Defendants.* :  
-----x

COMPLAINT

Plaintiffs Monster Worldwide, Inc. and Monster (California), Inc. (collectively referred to herein as "Monster"), by its attorneys, for its complaint against defendant, Franchise Monster Corp. ("Franchise Monster" or "Defendant"), allege as follows:

NATURE OF THE ACTION

1. This is an action for service mark infringement, unfair competition, passing off, cybersquatting and other related claims arising from Defendant's willful

adoption and use of FRANCHISE MONSTER as its name, service mark and domain name, which is confusingly similar to Monster's famous and well known name and trademark MONSTER and its other MONSTER Marks. Monster seeks a permanent injunction and the recovery of damages, profits, costs, attorney's fees and other relief as appropriate.

#### **THE PARTIES**

2. Plaintiff Monster Worldwide, Inc. is a Delaware corporation with its principal place of business at 622 Third Avenue, New York, New York, 10017.

3. Plaintiff, Monster (California), Inc. ("Monster California"), a wholly owned subsidiary of Monster Worldwide, Inc., is a California corporation with a place of business at 11845 W. Olympic Blvd., Los Angeles, California, 90064. All trademarks owned by Monster California are licensed to Monster Worldwide, Inc.

4. Upon information and belief, Defendant, Franchise Monster Corp. is a Delaware corporation with a place of business at 2295 S. Hiawassee Road, Suite 311, Orlando, Florida, 32832.

#### **JURISDICTION AND VENUE**

5. The First, Second, and Third Counts arise under the United States Trademark (Lanham) Act of 1946, as amended, 15 §§ U.S.C. 1051-1127. This Court has subject matter jurisdiction over the First, Second and Third Counts pursuant to Sections 39 and 44 of the Lanham Act, 15 U.S.C. § 1121 and 28 U.S.C. §§ 1331 and 1338.

6. The Fourth, Fifth and Sixth Counts arise under New York law and are substantially based upon the same operative facts as the First, Second and Third Counts. This Court has subject matter jurisdiction over the Fourth, Fifth and Sixth Counts pursuant

to 28 U.S.C. § 1338(b) and on the basis of supplemental jurisdiction, pursuant to 28 U.S.C. § 1367.

7. This Court has personal jurisdiction over Defendant based on the following: Defendant conducts business in this district, Defendant has engaged in tortious conduct in this district, and/or Defendant operates an interactive website targeted to Internet users in this district.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 in that a substantial part of the claims arose in this district.

#### **FACTS COMMON TO ALL COUNTS**

##### ***Monster's Intellectual Property Rights***

9. Monster is the world's leading provider of online information and services concerning careers, employment, business networking and recruitment. Monster has over 5000 employees in 40 countries around the world. Globally, over 29 million unique job seekers visit a Monster branded website each month.

10. Continuously since 1994, Monster has been engaged in providing services in the fields of employment placement, career information and recruitment through its Internet websites.

11. Monster's principal website, originally called THE MONSTER BOARD, became known as MONSTER.COM in January 1999. Since that time, Monster has used its name and mark MONSTER and its mark MONSTER.COM continuously in connection with providing employment related services through Internet websites, including websites featuring information on employment, career, business networking and recruitment services in local job markets.

12. Continuously during the past ten years, Monster has expanded its network of websites and added additional web-based interactive services designed to match persons seeking to advance their careers and personal development with businesses and institutions who offer opportunities to do so. These include MONSTERTRAK (located at [www.monstertrak.com](http://www.monstertrak.com)), which offers information on college internships and entry level jobs for recent graduates; MONSTER LEARNING (located at [www.monsterlearning.com](http://www.monsterlearning.com)), a database of online and campus degree programs and continuing education opportunities; and MONSTER GOVERNMENT SOLUTIONS (located at [www.monstergovernmentsolutions.com](http://www.monstergovernmentsolutions.com)), which provides recruitment and personnel management solutions for federal, state and local government agencies.

13. Monster's network of MONSTER branded websites is, by far, the most successful and widely used job placement, employment and career resource on the Internet. In 2007, 349 million job seekers, representing 12% of the global Internet audience, viewed a Monster branded website. These visitors viewed job postings 2.3 billion times, applied for jobs 150 million times, and posted 23.5 million resumes, averaging 64,000 resumes a day. Monster's Career Advice Portal was recognized by the "Webby" awards, the Oscars of the Internet on May 11, 2007 as the People's Voice Award Winner for Best Employment Web Site.

14. Monster California is the owner of, *inter alia*, the following Federal trademark registrations:

MARK	REG. NO.	SERVICES
MONSTER	2,347,985	computer services, namely, providing databases featuring recruitment and employment information, employment advertising, career information and resources, resume creation, resume transmittals

and communication of responses thereto via a global computer network

MONSTER	3,207,300	business and career networking services
MONSTER.COM	2,403,411	providing on-line information in the fields of employment, recruitment, careers, personal issues related to careers and work life, job resources, job listings and resumes; providing on-line interactive employment counseling and recruitment services; providing on-line employment placement services, namely, resume matching services via a global computer network
MONSTER WORLDWIDE	3,297,180	employment hiring, recruiting, placement, and staffing services; providing business information on employment and careers; online recruiting services, namely, providing searchable job postings and resume postings; career management services; advertising services in the nature of recruitment advertising and response management services and yellow pages advertising services in the field of employment; business consulting, business marketing consultation, and market research services in the fields of employment recruitment, employee and job profiling, employee and student communications and employer branding; providing information on employment opportunities and unemployment rates; online interactive career counseling services and resume preparations for others; providing coupons and discounts for goods and services offered by others; providing consumer information about home furnishings
MONSTER CAMPUS	3,275,989	providing interactive databases relating to admissions to institutions of higher learning, and achieving success in college; providing interactive databases relating to college scholarships and financial aid; providing interactive databases relating to employment information, advice on employment, resume creation and achieving success in one's career; resume posting services; resume matching services

MONSTERTRAK 2,698,464

providing information and advice on resume creation via a global computer network; providing interactive databases relating to recruitment of personnel and employment; and posting of resumes and matching resumes with employment opportunities listed by employers, all through a global computer network

15. The above-listed registrations are currently valid, subsisting and in full force and effect, and are registered on the Principal Register of United States Patent and Trademark Office. Registration Nos. 2,347,985 and 2,403,411 are incontestable pursuant to 15 U.S.C. § 1065. The trademarks identified above are collectively referred to herein as the MONSTER Marks.

16. Monster also has adopted and used as trademarks on its websites and its advertising and promotional materials, eight different cartoon-like monster characters (“Monster Character Trademarks”). Pictures of the Monster Character Trademarks are attached as Exhibit 1. Monster California owns Federal Trademark Registrations for its “Trumpassaurus” and “Technopillar” Monster Character Trademarks (Regs. Nos. 2,774,413 and 2,593,892 respectively). These registrations are currently valid, subsisting, and in full force and effect.

17. The Monster Character Trademarks appear throughout the Monster network of websites. A sample webpage depicting the Trumpassaurus is attached as Exhibit 2. Also, Monster consistently uses green and purple on its websites to create a uniform look. *See Ex. 2.*

18. Plaintiff’s services sold under the Monster Marks and the Monster Character Trademarks have been extensively and continuously advertised and promoted by Monster within the United States and, indeed worldwide.

19. By virtue of the high quality of the services rendered, and the substantial sums spent to advertise the products and services under the trademark MONSTER, the Monster Marks and Monster Character Trademarks, such trademarks have acquired strong secondary meaning in the minds of the consuming public and are now highly distinctive, famous, and serve uniquely to identify Monster's services. Through widespread and favorable public acceptance and recognition, these marks have become assets of incalculable value as symbols of Monster's business and services.

***Defendant's Wrongful Activities***

20. Upon information and belief, on or about September 1, 2006, long after Monster commenced use of its name and trademark MONSTER and its other Monster Marks, Defendant registered the domain name <www.franchisemonster.com>, without the permission or authorization of Monster and with complete knowledge and notice of Monster's trademark rights.

21. Upon information and belief, Defendant operates an interactive website available at the URL: <http://www.franchisemonster.net>, under the name and title "Franchise Monster." This website offers a searchable database of franchises, businesses for sale, and home based business on the Internet. In so doing, Defendant's Franchise Monster seeks to advance the career objections of persons seeking to become franchisers. Users are asked to select which territory they would like to search. The choices include New York and the search results list franchise and business opportunities within the State of New York and in this judicial district.

22. Upon information and belief, Defendant intentionally selected and chose a domain name and mark that incorporated the Plaintiff's trademark MONSTER in order to

confuse consumers into believing that Defendant and its interactive franchise opportunity services were somehow associated with or sponsored by Monster and to trade off the goodwill already established by Monster in its famous name and mark MONSTER, its family of MONSTER Marks and its network of MONSTER branded websites.

23. The name FRANCHISE MONSTER and the domain name <www.franchisemonster.net> are confusingly similar to Monster's famous name and mark MONSTER and the other MONSTER Marks.

24. On the top of the home page for Defendant's website, next to the name "Franchise Monster," there appears on the top left, next to the text, appears a depiction of a cartoon like monster character. The website also uses the colors green and purple as background colors and for framing and headers. A true and correct printout of the home page for Defendant's website is attached as Exhibit 3.

25. Defendant's use of a cartoon like monster character is clearly an attempt to trade off Monster's goodwill and reputation. Upon information and belief, defendant knowingly adopted this design to further enhance the association of the domain name and website with Monster such that Internet users will erroneously believe the website located at <franchisemonster.net> is an authorized Monster website.

26. Similarly, the selection of the colors green and purple as background colors and for framing and headers, was not random, but rather, upon information and belief, was knowingly selected to further enhance the association of the website with Monster's network of websites, which also use the same colors. *Compare* Ex. 2 and Ex. 3.

27. Upon information and belief, Defendant's unauthorized use of the name and mark FRANCHISE MONSTER, the domain name <franchisemonster.net>, and the

cartoon “monster” character is misleading, fraudulent and is likely to and will inevitably confuse, mislead, and deceive the public into falsely believing that Defendant, and its business and services are in some way affiliated with, or authorized, or sponsored by Monster.

28. On October 17, 2007, Monster wrote to Defendant and demanded that Defendant cease all use of the name and mark FRANCHISE MONSTER and the domain name <franchisemonster.net>, and transfer the domain name to Monster. A true and correct copy of Monster’s October 17, 2007 letter is attached as Exhibit 4. As of the filing of this Complaint, Monster has not received a response.

**FIRST COUNT**  
**(Federal Trademark Infringement - 15 U.S.C. § 1114)**

29. Monster repeats and realleges the allegations of paragraphs 1 through 28 of this Complaint, as if fully set forth herein.

30. Upon information and belief, Defendant’s use of the name and mark FRANCHISE MONSTER is a colorable imitation of Monster’s federally registered trademarks MONSTER and MONSTER Marks and is likely to cause confusion, to cause mistake, or to deceive as to source, sponsorship, or authorization of Defendant’s website, business, and services.

31. Upon information and belief, Defendant’s actions constitute service mark infringement in violation of Section 32 of the Lanham Act, 15 U.S.C. § 1114.

32. Upon information and belief, as a proximate result of Defendant’s actions, Monster has suffered and will continue to suffer great damage to its business, goodwill and reputation.

33. Monster has no adequate remedy at law. Unless Defendant is preliminarily and permanently enjoined, Monster will continue to suffer irreparable harm.

34. Upon information and belief, by reason of Defendant's unlawful conduct as alleged above, Monster has been substantially injured and is entitled to damages which are presently indeterminate, the costs of this action, and attorney's fees.

**SECOND COUNT**  
**False Designation of Origin, Unfair Competition  
and Trademark Infringement - 15 U.S.C. § 1125 (a) (1) (A)**

35. Monster repeats and realleges the allegations of paragraphs 1 through 34 of this Complaint, as if fully set forth herein.

36. Defendant's aforementioned acts constitute false designation of origin, and trademark infringement in violation of section 43(a)(1)(A) of the Lanham Act, 15 U.S.C. § 1125(a).

37. Upon information and belief, as a proximate result of Defendant's actions, Monster has suffered and will continue to suffer great damage to its businesses, goodwill and reputation.

38. Unless Defendant is preliminarily and permanently enjoined, Monster will continue to suffer irreparable harm.

39. Upon information and belief, by reason of Defendant's unlawful conduct as alleged above, Monster has been substantially injured and is entitled to damages, which are presently indeterminate, the costs of this action, and attorney's fees.

**THIRD COUNT**  
**(Cybersquatting/Cyberpiracy - 15 U.S.C. § 1125(d))**

40. Monster repeats and realleges the allegations of paragraphs 1 through 39 of this Complaint, as if fully set forth herein.

41. The name and mark MONSTER and the MONSTER Marks are distinctive and have become associated with Monster and thus exclusively identify Monster's business and services.

42. Upon information and belief, Defendant, willfully and in bad faith, has wrongfully registered and used the domain name <franchisemonster.net> with a bad faith intent to profit from its use of Monster's famous name and trademark MONSTER. At the time Defendant registered this domain name, Defendant knew that "FRANCHISE MONSTER" was confusingly similar to Monster's famous name and mark MONSTER and its other Monster Marks.

43. Upon information and belief, Defendant's actions constitute cyberpiracy in and affecting interstate commerce in violation of 15 U.S.C. § 1125 (d).

44. Upon information and belief, as a proximate result of Defendant's actions, Monster has suffered and will continue to suffer great damage to its business, goodwill, reputation and profits.

45. Monster has no adequate remedy at law for Defendant's cybersquatting and cyberpiracy. Unless Defendant is permanently enjoined, Monster will continue to suffer irreparable harm.

46. Upon information and belief, by reason of Defendant's unlawful conduct as alleged above, Monster has been substantially injured and is entitled to statutory damages, the costs of this action, and attorney's fees.

**FOURTH COUNT**  
**(New York Common Law Trademark Infringement)**

47. Monster repeats and realleges the allegations of paragraphs 1 through 46 of this Complaint, as if fully set forth herein.

48. This claim arises under the common law of the State of New York. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338 (b) and based on supplemental jurisdiction.

49. Upon information and belief, Defendant's aforementioned acts constitute trademark infringement in violation of New York common law.

50. Upon information and belief, as a proximate result of Defendant's actions, Monster has suffered and will continue to suffer great damage to its business, goodwill, reputation and profits.

51. Monster has no adequate remedy at law. Unless Defendant is permanently enjoined, Monster will continue to suffer irreparable harm.

52. Upon information and belief, by reason of Defendant's unlawful conduct as alleged above, Monster has been substantially injured and is entitled to damages and Defendant's profits attributable to Defendant's infringement, which are presently indeterminate, the costs of this action, and attorney's fees.

**FIFTH COUNT**  
**(Unfair Competition under New York Common Law)**

53. Monster repeats and realleges the allegations of paragraphs 1 through 52 of this Complaint, as if fully set forth herein.

54. Upon information and belief, Defendant's aforementioned acts constitute unfair competition in violation of New York common law.

55. Upon information and belief, as a proximate result of Defendant's actions, Monster has suffered and will continue to suffer great damage to its business, goodwill, reputation and profits.

56. Monster has no adequate remedy at law. Unless Defendant is permanently enjoined, Monster will continue to suffer irreparable harm.

57. Upon information and belief, by reason of Defendant's unlawful conduct as alleged above, Monster has been substantially injured and is entitled to damages and Defendant's profits attributable to Defendant's infringement, which are presently indeterminate, the costs of this action, and attorney's fees.

**SIXTH COUNT**  
**(Deceptive Trade Practices)**

58. Monster repeats and realleges the allegations of paragraphs 1 through 57 of this Complaint, as if fully set forth herein.

59. This claim arises under the state law of the State of New York. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1338 (b) and based on supplemental jurisdiction

60. Upon information and belief, Defendant's aforementioned acts constitute a deceptive business act or practice in violation of N.Y. Gen. Bus. Law. § 349.

61. Upon information and belief, as a proximate result of Defendant's actions, Monster has suffered and will continue to suffer great damage to its business, goodwill, reputation and profits.

62. Monster has no adequate remedy at law. Unless Defendant is permanently enjoined, Monster will continue to suffer irreparable harm.

63. Upon information and belief, by reason of Defendant's unlawful conduct as alleged above, Monster has been substantially injured and is entitled to damages and Defendant's profits attributable to Defendant's wrongful acts, which are presently indeterminate, the costs of this action, and attorney's fees.

**PRAYER FOR RELIEF**

WHEREFORE, Monster prays for the following relief:

1. A judgment declaring that:
  - (a) defendant has willfully infringed Monster's service marks;
  - (b) defendant has willfully engaged in unfair competition, false advertising, false or misleading description or misrepresentation of fact, and false designation of origin;
  - (c) defendant has willfully engaged in cybersquatting;
  - (d) defendant has willfully engaged in trademark infringement, unfair competition, misappropriation, simulation, and passing off pursuant to New York common law; and
  - (e) Defendant has willfully engaged in deceptive trade practices pursuant to N.Y. Gen. Bus. Law. § 349.
2. Defendant, its officers, agents, servants, employees, members, affiliates, subsidiaries, and all other persons, firms or corporations in active concert or participation with them, be permanently enjoined and restrained from using the name and mark FRANCHISE MONSTER or any marks similar to Monster's name and mark MONSTER and the MONSTER Marks and any variants thereof on or in connection with any online services.
3. Defendant be directed to file with this Court and serve upon Monster within thirty days after entry of the injunction a report in writing under oath, setting forth in detail the manner and form in which it has complied with the injunction.
4. Defendant be ordered to turn over to Monster all copies, electronic and physical, of all materials in their possession, custody, or control, and that use or display the name and mark FRANCHISE MONSTER and any variants thereof to ensure compliance with the Court's order.
5. Defendant be ordered to transfer ownership of the domain name <franchisemonster.net> to Monster.

6. Defendant be ordered to change its corporate name to one that does not incorporate the term MONSTER and that is not confusingly similar to Monster's name and mark MONSTER or the MONSTER Marks.

7. Defendant be ordered to pay statutory damages in the amount of \$100,000 per for cybersquatting in violation of 15 U.S.C. § 1125(d)(1).

8. Defendant be ordered to compensate Monster adequately for the damages caused by their wrongful acts as set out above.

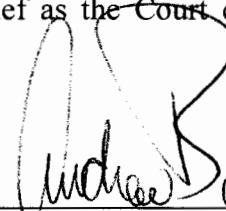
9. Defendant be ordered to pay Monster all profits realized by Defendant in connection with its unlawful acts alleged herein.

10. Defendant be ordered to pay three times any of Defendant's profits made as a result of Defendant's wrongful actions or three times Monster's damages, which ever is greater.

11. Defendant be ordered to pay Monster its costs, disbursements, and attorney fees incurred in this action, as provided by law.

12. Monster be awarded such further relief as the Court deems just and equitable under the circumstances.

Dated: January 29, 2008

By:   
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#### TRUMPASAURUS

Never one to toot his own horn, Trump is clearly the biggest thing that's ever happened to the working world. Whether you're looking for big ideas about how to find the job of your dreams or big ways to advance your career, you can always count on our main monster.



#### SWOOP

Don't let his timid expression and Muppet-like features fool you, Swoop is definitely one monster who likes to make his own moves. Determined, decisive and destined for greatness -- team up with Swoop and your future is bound to take off.



#### 'Cruiter

This amazing little monster can not only spot top talent in all corners of the world; he'll go to any depths to find it. His buoyant personality, can-do attitude and exceptional vision, make 'Cruiter one impressive little critter.



#### SKEETER

If you suddenly find yourself behind a cloud of dust, chances are you just missed Skeeter. Skeeter makes "The Little Engine That Could" look like a slacker. He's quick. He's agile. He's the cutest thing on two wheels and he's constantly on the move...beating everyone else to the punch.



#### NETTIE

When she's not playing her favorite card game, Crazy 8's, you'll find Nettie doing her other favorite thing...surfing the Net. She likes to arm herself with as much information about the Web as she can. Talk about "insite"-- she's like a walking Internet-a-pedia and she loves to share her knowledge with everyone around her.



#### AL-ERT

Whenever you need to get something off your chest, Al-Ert is all ears. In fact, he'll probably know what you're going to say before you say it, because when it comes to work-related issues, he's seen and heard it all. Count on Al-Ert to just keep rolling with the punches while dispensing a wealth of wisdom along the way.



#### TECHNOPILLAR

Think cool cat and total technoid all wrapped up in one and you've got some idea what makes this cyber savvy centipede so special. With his awesome instincts and innate ability to pinpoint just where the latest technology is going, Technopillar has more than just one leg up on the competition.



**THWACKER**

You wouldn't expect someone named "Thwacker" to be good at long term relationships, so it may surprise you to learn that this guy is one seriously supportive monster. No matter what your goals are, or where your career takes you, Thwacker is constantly in tune to your needs, sticking with you every step of the way.

**For Job Seekers**

- > Job Search
- > Company Research (Beta)
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- > Online Degrees
- > International Jobs
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- > Security Center

**For Employers**

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- > Post a Job
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Keeping in touch with the office can be tricky when traveling. Try our tips to stay in communication.

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More bilingual healthcare workers are needed, with nurses who speak Spanish especially in demand.

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### Job Search

Enter keywords (e.g., nurse, sales)

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Search

Search Global Jobs

### Today's Buzz

Pro Athletes Do Earn Their Millions

Weep not for Brett Favre and Philip Rivers, whose respective NFL squads were bounced...

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Now you can find the right job faster with My Monster Premium Tools!

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Fine tune your interview skills to land that dream job with Monster's Interview Mastery. Get started now!

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- We will market your strengths to edge out the competition
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- > Monster Store
- > Monster Employment Index
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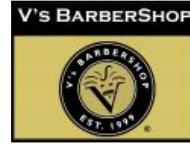
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When you're ready to go into business for yourself, Franchise Monster is the place to start. With a searchable database of franchises, businesses for sale and home-based business opportunities, we can show you how to be your own boss and increase your earnings at the same time.



When you're ready to go into business for yourself, Franchise Monster is the place to start. With a searchable database of franchises, businesses for sale and home-based business opportunities, we can show you how to be your own boss and increase your earnings at the same time.

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October 17, 2007

**VIA USPS EXPRESS MAIL & ELECTRONIC MAIL**

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Dear Mr. Finch:

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Accordingly, we demand your assurance, in writing, that you will (i) immediately cease and desist from all use of the Franchise Monster, "FranchiseMonster.net" marks and "[www.franchisemonster.net](http://www.franchisemonster.net)" and any other mark which incorporates the term "Monster" or any other mark confusingly similar thereto, and (2) promptly surrender or transfer to us the domain "[franchisemonster.net](http://franchisemonster.net)" and any other domain name which incorporates the word "Monster." If we do not receive your prompt agreement on this matter, we will not hesitate to initiate an action against you and your company in United States District Court, seeking preliminary and permanent injunctive relief, an award of all profits arising from your infringement, damages, costs and attorneys' fees.

If we have not had a satisfactory response by October 24, 2007, we reserve the right to commence litigation without further notice to you. The foregoing is without prejudice to any of our rights and remedies against you or your company, all of which are expressly reserved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Levina Wong".

Levina Wong  
Corporate Counsel  
Monster Worldwide, Inc.